

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF
PHARMACY AND BJD PROPERTIES, INC. f/k/a MEDIRATE
PROFESSIONAL PHARMACY d/b/a MEDICATE LONG TERM CARE
PHARMACY**

Come now BJD Properties, Inc. f/k/a Medirate Professional Pharmacy d/b/a Medicate Long Term Care Pharmacy ("Respondent" or "Medirate") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's permit to operate a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its permit. Being aware of these rights provided it by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to it.

Respondent acknowledges that it has received a copy of the draft complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's permit to operate a pharmacy, numbered 005165, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

Joint Stipulation of Facts

1. Petitioner, the Missouri Board of Pharmacy ("the Board"), is an agency of the State of Missouri created and established by Section 338.110, RSMo, for the purpose of administering and enforcing the provisions of Chapter 338, RSMo.

2. Respondent, BJD Properties, Inc. f/k/a Medirate Professional Pharmacy d/b/a Medicate Long Term Care Pharmacy ("Medirate"), holds a pharmacy permit issued by the Board, Permit No. 005165. Medirate's physical location is in Farmington, Missouri. Medirate's permit was active at all times relevant herein, but is presently no longer active due to a subsequent change of ownership.

3. Beginning in or around the year 2000, Mark Lee Redmon ("Redmon") (date of birth 02/07/1973) began working at Medirate as a computer operator.

4. During a 14-month period beginning in or around February, 2004 and ending in April, 2005, on an almost weekly basis, Redmon repeatedly diverted controlled substances from Medirate, including, but not limited to Alprazolam (brand name "Xanax"), Hydrocodone/APAP,

Diazepam (brand name "Valium"), and APAP/Codeine.

5. After stealing the controlled substances from Medirate, Redmon sold the controlled substances on the street.

6. Richard S. Johnson was pharmacist-in-charge of Medirate during this period of time.

7. Mr. Johnson completed a Report of Theft or Loss of Controlled Substances (DEA Form 106) indicating that Medirate lost approximately 300,000 dosage units of controlled substances.

8. Medirate did not have adequate security and controls in place to detect and prevent diversion of controlled substances as described in paragraphs 3 and 4 above.

9. Medirate's failure to provide effective controls and procedures to guard against theft and diversion of controlled substances as described in paragraphs 3 and 4 above is in violation of 21 CFR 1301.71 which states in pertinent part:

(a) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

10. Medirate's failure to provide effective controls and procedures to guard against theft and diversion of controlled substances as described in paragraphs 3 and 4 above is in violation of 19 CSR 30-1.031 which states in pertinent part:

(1) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

11. Cause exists for the Board to take disciplinary action against Medirate pursuant to Section 338.055.2(6) because Medirate's failure to implement effective security or controls to

safeguard its supplies of controlled substances enabled Redmon to steal controlled substances, then resell them on the street for illicit use, on a regular basis for over fourteen months.

12. Cause exists for the Board to take disciplinary action against Medirate pharmacy pursuant to Section 338.055.2(13) because Medirate's failure to safeguard and control its supplies of controlled substances violates the trust the public places in Medirate by virtue of its status as a state-licensed pharmacy that Medirate will safeguard the public by preventing its stock of controlled substances from being sold on the street.

13. Cause exists for the Board to take disciplinary action against Medirate pharmacy pursuant to Section 338.055.2(15) because Medirate violated drug laws or rules and regulations of this state and of the federal government as described in this Settlement Agreement.

14. The employees and customers of Medirate had a relationship of professional trust and confidence in Medirate in that employees and customers of Medirate relied on it to make reasonable efforts to ensure compliance with all relevant pharmacy and drug laws and standards of practice.

15. Medirate's conduct alleged herein constitutes a violation of the professional trust and confidence placed in Respondent by Medirate's employees and customers.

16. Medirate should have known that violations of pharmacy laws or rules had occurred.

17. The intent of this Settlement Agreement is to resolve all matters which are at issue or could be at issue related to the diversion of drugs by Redmon. Based on the matters which are the subject of this Settlement Agreement, no disciplinary action by the Board is sought or will be taken against the individual pharmacy license issued by the Board to Barbara J. Dunning, R.Ph.

18. It is the further intent of this Settlement Agreement to resolve all matters against the permit issued to Medirate, Permit No. 005165. The disciplinary action described in this Settlement Agreement, and mutually agreed to by the parties, relates to the pharmacy permit issued to Medirate only, and shall have no adverse effect on the license issued to the company which purchased the assets of Medirate, or its successors for the business formerly operated by Medirate at 312 E. Karsch Boulevard, Farmington, Missouri, namely Interlock Pharmacy Systems, LLC d/b/a Medicate LTC Pharmacy, Permit No. 2006009024

JOINT CONCLUSIONS OF LAW

19. Cause exists for Petitioner to take disciplinary action against Medirate's permit pursuant to 20 CSR 2220-2.010(1)(N), which states:

(N) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

20. Cause exists for Petitioner to take disciplinary against Medirate's permit under Section 338.285, RSMo, which states:

The board is hereby authorized and empowered, when examination or inspection of a pharmacy shall disclose to the board that the pharmacy is not being operated or conducted according to such legal rules and regulations and the laws of Missouri with respect thereto, to cause a complaint to be filed before the administrative hearing commission pursuant to chapter 621, RSMo, charging the holder of a permit to operate a pharmacy with conduct constituting grounds for discipline in accordance with section 338.055.

21. Cause exists for Petitioner to take disciplinary action against Medirate's permit

under Section 338.055, RSMo, which states in relevant parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence.

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

1. Respondent shall voluntarily surrender to the Board its permit to operate a pharmacy, Permit No. 005165.
2. Respondent shall immediately return all indica of licensure as a pharmacy to the

Board.

3. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open and public record of the Board as proved in Chapters 338, 610 and 620, RSMo.

4. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

5. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

 REQUESTS

BD **DOES NOT REQUEST**


THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S PERMIT TO OPERATE A PHARMACY.

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's permit and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's permit. Effective the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's permit, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement agreement goes into effect 15 days after the document is signed by the Board's Executive Director.

RESPONDENT


BJD PROPERTIES, INC.
f/k/a MEDIRATE PROFESSIONAL
PHARMACY d/b/a MEDICATE LONG
TERM CARE PHARMACY

By: 
Barbara J. Dunning, R.Ph.
President

Date: 5/26/08

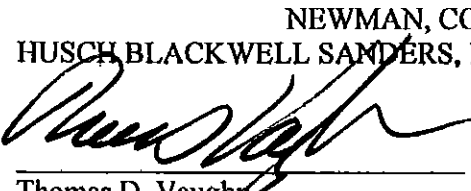
PETITIONER

MISSOURI BOARD OF
PHARMACY

By: 
Debra C. Ringgenberg
Executive Director

Date: 6-10-08

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